Mat Isa bin Shuid v Amanah Raya Bhd & Anor

HIGH COURT (IPOH) — CIVIL APPEAL NO 12–143 OF 2000
SU GEOK YIAM JC
28 MARCH 2003

***Tort** — Negligence — Highway — Motor accident — Apportionment of liability — Collision from the rear — Whether both the deceased and defendant equally negligent for the accident*

The first plaintiff was the administrator of the deceased. The second plaintiff was the mother of the deceased. The deceased was riding his motorcycle when he collided into a motorcycle in front of him which was being ridden by the defendant in the same direction. As a result of the collision the deceased suffered loss and serious injuries. The deceased, subsequently, succumbed to his injuries. The plaintiffs' case was that the collision was caused by or contributed to by the negligence of the defendant. At the conclusion of the trial, the learned sessions court judge found both the deceased and defendant equally negligent for the accident which caused the deceased's death and loss and apportioned liability at 50:50. The defendant appealed to the High Court.

Held, allowing the appeal only on the issue of liability:

(1) Since the collision was from the rear, the liability should be apportioned higher on the deceased than the defendant since the law requires the deceased to ride at a safe distance behind the vehicle in front to avoid contigencies such as the present case, where the vehicle in front suddenly turning right without giving adequate warning. The law, therefore, imposes a higher duty on the deceased than on the defendant (see p 544B–C).

(2) In the premises, as there was a substantial misdirection of fact and law on the part of the learned sessions court judge concerning apportionment of liability the court allowed the appeal on liability and apportioned liability between the defendant and the deceased at 30% and 70%, respectively (see p 544C–D).

[Bahasa Malaysia summary

Plaintif pertama adalah pentadbir si mati. Plaintif kedua adalah ibu kepada si mati. Si mati sedang menunggang motorsikal beliau apabila beliau berlanggar dengan motorsikal di hadapan beliau yang ditunggang oleh defendan yang menuju ke arah yang sama. Akibat perlanggaran tersebut, si mati mengalami kerugian dan kecederaan teruk. Si mati, akhirnya, telah meninggal dunia akibat kecederaan tersebut. Kes plaintif adalah bahawa perlanggaran tersebut telah disebabkan oleh atau disumbangkan oleh kecuaian defendan. Di akhir perbicaraan, hakim mahkamah sesyen yang bijaksana mendapati

bahawa kedua-dua si mati dan defendan adalah sama-sama cuai dalam kemalangan yang menyebabkan kematian si mati dan kerugian dan laibiliti dibahagikan 50:50. Defendan telah merayu ke mahkamah ini.

Diputuskan, membenarkan rayuan tersebut:

(1) Memandangkan perlanggaran adalah dari belakang, laibiliti adalah sepatutnya dibahagikan lebih kepada si mati kerana undang-undang menuntut bahawa si mati mesti menunggang motorsikalnya pada jarak yang selamat di belakang kenderaan yang di hadapannya untuk mengelakkan sebarang kemungkinan seperti di dalam kes semasa, di mana kenderaan di hadapan tiba-tiba membelok ke kanan tanpa memberikan amaran yang secukupnya. Oleh itu, undang-undang mengenakan kewajipan yang lebih tinggi terhadap si mati dari defendan (lihat ms 544B–C).

(2) Oleh kerana terdapat salah arah yang besar dalam fakta dan undang-undang di pihak hakim mahkamah sesyen yang bijaksana berhubung pembahagian laibiliti, mahkamah membenarkan rayuan tersebut berdasarkan laibiliti dan membahagikan laibiliti tersebut antara defendan dan si mati pada kadar 30% dan 70%, masing-masing (lihat ms 544C–D).]

Notes

For cases on highway negligence, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 733–736.

Appeal from: Civil Suit No 53-123-97 (Sessions Court, Teluk Intan)

Suresh Hari Krishnan (*Lim Him Wee & Co*) for the appellant.
Sarjeet Singh Sandu (*Sandu & Assoc*) for the respondent.

Su Geok Yiam JC: This is an appeal by the defendant in the court below against the decision of the Sessions Court, Teluk Intan dated 25 August 2000 on liability and quantum in a running down case.

I shall refer to the appellant and the two respondents, as the defendant and the two plaintiffs, respectively.

The facts, briefly, are as follows.

The first plaintiff is the administrator of the deceased. The second plaintiff is the mother of the deceased.

On 15 June 1997, at about 8am as the deceased was riding his motorcycle bearing registration number BEJ 861 from Labuh Kubong towards Teluk Intan he collided into a motorcycle in front of him bearing registration number ACT 6299 which was being ridden by the defendant in the same direction. As a result of the collision, the deceased suffered loss and serious injuries. The deceased, subsequently, succumbed to his injuries.

The plaintiffs' case as pleaded in their amended statement of claim is that the collision was caused by or contributed to by the negligence of the defendant in, inter alia:

(a) driving too fast under the circumstances; and

(b) crossing from the left side of the road to right side of the road in front of the deceased and encroaching into the deceased's right of way without paying attention to the presence of the deceased who was at that time riding behind the defendant and giving insufficient warning to the deceased to avoid the collision.

The deceased was aged 21 years at the time of his death. He was earning a monthly salary of RM900 out of which he gave RM400 to the second plaintiff.

The plaintiffs claimed for general and special damages, interest thereon and costs of the action.

The defendant's case

In his amended statement of defence, the defendant admitted the collision but denied that it was caused by or contributed to by his negligence.

Alternatively, he contended that the collision was caused by the negligence of the deceased in, inter alia:

(a) riding his motorcycle at an excessive speed;

(b) creating a dangerous situation such that the defendant was unable to avoid the collision;

(c) failing to heed the defendant's warning; and

(d) failing to avoid colliding into the defendant.

At the conclusion of the trial, the learned sessions court judge found both the deceased and defendant equally negligent for the accident which caused the deceased's injuries and loss and apportioned liability at 50:50.

He awarded, based on 100% liability, a sum of RM30,000 to the first plaintiff as general damages with interest at the rate of 8%pa from the date of service of the summons to the date of judgment and a sum of RM11,850 as special damages with interest at the rate of 4%pa from the date of accident to the date of judgment and thereafter at 8% on the judgment sum until settlement. He also awarded to the second plaintiff a sum of RM33,600 without interest, based on 100% liability, as loss of dependency.

He further awarded costs of the action to the plaintiffs.

At the conclusion of the appeal, the court allowed the appeal only on the issue of liability. Based on the following reasons, the court held that the defendant was 30% liable and the deceased was 70% liable.

The court agreed with the submissions of the learned counsel for the appellant that the learned sessions court judge erred when he failed to take into account the evidence of the assistant investigating officer that as a result of the collision the rear number plate of the defendant had fallen off. If he

had done so he would have concluded that the deceased had collided into the appellant from the rear.

The evidence of SP1, Sarjan 52235 Mansor, the assistant investigating officer, clearly shows that the front headlamp of the deceased's motorcycle was broken and the rear number plate of the defendant's motorcycle was broken.

The learned sessions court judge was, therefore, in error when he made the 50:50 apportionment of liability.

In my judgment, the other damage to the two motorcycles was most probably brought about when the deceased's motorcycle after colliding into the rear of the defendant's motorcycle at a slight angle, since the defendant had stopped his motorcycle at the center white line in order to turn right, proceeded to collide into the damaged right portion of the defendant's motorcycle.

SP1 also testified that action had been taken against the deceased under r 10. Action was also taken against the deceased under s 26(1) of the Road Transport Act 1987 as the deceased did not possess a driving licence at the time of the accident.

The defendant testified as SD1. According to the defendant, before the accident he was on his way home from the Labu Kubong Police Station. He was riding his motorcycle on the left side of the road. When he was approaching his house, he gave a signal to turn right. He then stopped at the middle of the road on the centre broken white line dividing the road as there was a car coming from the opposite direction. While he was waiting for about four to five minutes for the car to pass him, suddenly, a motorcycle collided into him from behind.

He testified that he did not know that the deceased was riding his motorcycle behind him because before he stopped his motorcycle on the centre white line he did look into his rear mirror but did not see any vehicle coming from his rear.

After the collision the defendant fell onto the road.

On cross-examination the defendant maintained the version he had given in his examination-in-chief. Nevertheless, he did point out an error in his police report, D3, lodged two months after the accident, because he was injured as a result of the accident. He was not re-examined.

The deceased in his police report, P2, an agreed document lodged about one year after the accident said that he and the defendant were travelling in the same direction and that as he was following behind the defendant, the defendant suddenly turned right without giving any warning.

As the distance between the deceased and the defendant was too close, the deceased was unable to avoid colliding into the defendant. After the collision the deceased fell on the right side of the road.

In my judgment, since the defendant did not ensure that it was safe for him to turn right before doing so by checking in his rear mirror to see that there was no vehicle behind him before he turned right the learned sessions

court judge was correct to hold that the defendant was negligent. Had the defendant done so, he would have noticed the presence of the deceased behind him since upon his own admission and the evidence of SP1 the stretch of road was a straight one.

In my judgment, the. learned sessions court judge was also correct when he held that the deceased was also negligent in that he followed too closely behind the defendant.

However, since the collision was from the rear, the liability should be apportioned higher on the deceased than the defendant since the law requires the deceased to ride at a safe distance behind the vehicle in front to avoid contingencies including the one which happened in this case, that is, the vehicle in front suddenly turning right without giving adequate warning. The law, therefore, imposes a higher duty on the deceased than on the defendant.

In the premises, as there is a substantial misdirection of fact and law on the part of the learned sessions court judge concerning apportionment of liability, the court allowed the appeal on liability and apportioned liability between the defendant and the deceased at 30% and 70%, respectively.

Appeal allowed.

Reported by Peter Ling